IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.182 OF 2006
IN
APPEAL NO.689 OF 2002

Shri.Sampat Ramu Patole]
Age 40 years, Occ: Agri.]
r/o Dharampuri, Tal.]
Malshiras, Dist.Solapur]
At present in the Kalamba]
Central Jail, Kolhapur]..Applicant
(Ori.Accused No.1)

Vs.

The State of Maharashtra]
through the Police Sub-]
Inspector Malshiras Police]
Station, Tal.Malshiras,]
Dist.Solapur]..Respondent

....
Mr.R.V.Bansode Advocate for Applicant
Smt.V.R.Bhosale, A.P.P. for the State
....

CORAM: N.V.DABHOLKAR AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : FEBRUARY 10,2006

P.C.:

1. Heard the learned advocate for the applicant and learned A.P.P. for the State.

2. The applicant has been convicted under Sections 302 r.w. 34 of IPC and sentence to R.I. for life. Against the said conviction, the applicant-appellant has filed Criminal Appeal No.689 of 2002 which is pending before this Court. The bail application preferred by the applicant-accused has been rejected by this Court. Now the applicant is seeking temporary release on the ground of marriage of his brother which is to take place on 14.2.2006.

3. Mr.Bansode, the learned advocate for the applicant has submitted that the applicant can be released on parole on the ground of marriage of his son. He has placed reliance on the decision of the Supreme Court in the case of **Sunil Fulchand Shah Vs. Union of India; 2000 ALL MR (Cri.) 745**. In support of his contention that parole can be granted on the ground of marriage of a close relative, Mr.Bansode has placed reliance on para 16 wherein it is stated as under:

. "parole is only a temporary arrangement by which the detenu is released for a temporary fixed period to meet certain

situations.

. Mr.Bansode submitted that marriage of relative would fall under "certain situations" as observed in the case of Sunil Shah. We have carefully perused the said decision. It is true that it is observed therein that parole is granted to meet "certain situations" however, the said decision nowhere states that marriage is a situation wherein parole can be granted. Thus, we are of the opinion that this decision would be of no help to the applicant.

4. Thereafter, reliance was placed by Mr.Bansode on the decision of this High Court in the case of **Manjulabai Kisna Gulabe Vs. State of Maharashtra; 2002 ALL MR (Cri.) 1720**. Mr.Bansode has pointed out that in the said case, parole was granted for the marriage of the daughter of the lady applicant therein. We have perused the said judgment and we find that in the said case, what was pointed out to the Court was the Rules of parole and furlough which were applicable to the Government of Gujarat. The said rules provide for grant of parole for any sufficient cause. As far as the parole rules for the State of Maharashtra are concerned, the ground

'any other sufficient cause' has been deleted. Moreover, in the Rules relating to Gujarat, there was a specific provision for grant of parole on the ground of marriage. Clause (a) of the said Rules reads as under:

> . "Marriage of the prisoner himself or any of his children or the marriage of the prisoner's sister if he has no living partner".

. However, as far as the State of Maharashtra is concerned, earlier Rules for grant of parole read as under:

> . "**19. When a prisoner may be released on parole** -- A prisoner may be released on parole for such period as the Competent Authority referred to in rule 18 in its discretion may order, in cases of serious illness, or death of any member of the prisoner's family or of his nearest relatives or for any other sufficient cause".

. However, thereafter Rule 19 was amended and amended Rule 19 reads as under:

> . "**19 When a prisoner may be released on parole -** A prisoner may be released on

> parole for such period not exceeding thirty days at a time as the Competent Authority referred to in rule 18, in its discretion may order, in cases of serious illness, or death of nearest relative such as mother, father, sister, brother, children, spouse of the prisoner, or in case of natural calamity such as house collapse, floods, fire. No such parole or extension of parole shall be granted without obtaining a police report in all cases except in the case of death of his nearest relatives mentioned above."

5. The learned advocate for the petitioner also placed reliance on the decision in the case of **Bhikabai Devasthi Vs. State of Gujarat and others reported in A.I.R. 1987 Gujarat 136 and the decision of the Apex Court in the case of Mochi Raju Vs. State of Gujarat in Criminal M.P. Nos.380- 381 of 2001 in Criminal Appeal No. 75-76 of 2000** wherein parole was granted on the ground of marriage of relative. The said decisions were also relied upon in the case of **Manjulabai Gulabe.** Both the cases are from Gujarat and as observed earlier by us the rules relating to parole in the State of Gujarat have a specific provision for grant of parole on the ground of marriage, whereas the rules relating to parole in Maharashtra have no such provision. So also reliance was placed on the

decision of the Apex Court in **Cri.M.P.No. 6676 of 2001 in Criminal Appeal No.478 of 2000** in the case of **Zafar Vs. State of Uttar Pradesh.** Firstly, in the said case what were the rules relating to parole in the State of Uttar Pradesh is not stated, moreover the learned counsel for the State gave no objection to the grant of parole, hence, parole came to be granted. Thus, it is seen that in the said case parole was granted by consent of the prosecution. In such case the present applicant cannot make use of such an order granted on account of consent.

6. We would like to advert to the decision of the Full Bench of this Court (to which one of us is a party i.e. Smt.V.K.Tahilramani, J.). The Full Bench in its decision dated 22nd December, 2005 in the case of **S.Sant Singh @ Pilli Singh Ajit Singh Kalyani Vs. The Secretary, Home Department Govt.of Maharashtra and others (in Criminal Writ Petition No.345 of 2005)** had occasion to consider the Rules relating to grant of parole. In its decision the Full Bench has specifically observed that parole can be granted only in case of contingencies set out in Rule 19 relating to grant of parole. After

the decision of the Full Bench, it would not be possible for this Court to grant parole on the ground of marriage of son of the applicant.

7. In view of the observations in the above judgment, it is clear that parole can be granted only in case of contingencies mentioned in Rule 19 and parole cannot be granted on the ground of marriage of convict or any of his family members. In this view of the matter, we do not find that this is a fit case to grant parole, hence, on this ground this application for release of applicant on parole on the ground of marriage of his son deserves to be rejected.

8. Thereafter, Mr.Bansode has submitted that applicant may be released on bail for a temporary period to attend the marriage of his son. In answer to this submission made on behalf of the applicant, Smt.Bhosale, the learned A.P.P. for the State, has submitted that if no case for release of applicant is made out, he cannot be released for a limited period. In support of her contention, Smt.Bhosale has placed reliance on the decision of the Supreme Court in the case of **State of Uttar**

Pradesh Vs.Atik Ahmed; AIR 2002 SC 2435 wherein it is observed that "if case for release of applicant on bail is not otherwise made out, he cannot be released for a limited period.

9. In the present case, the applicant had earlier preferred an application for bail which came to be rejected by this Court by order dated 11.10.2005. In that order, it is observed that applicant who was armed with axe, gave blow of axe on Fulabai Raghunath. Fulabai sustained three injuries on account of assault with axe. The evidence in the said case shows that the blow with axe was dealt with so much force that the axe got imbedded in the ribs of Fulabai and she had to be taken to hospital in that state with the axe imbedded in her body. While considering the application for bail, this Court considered the role played by the applicant in assaulting Fulabai and thereafter, the bail application came to be rejected.

10. Looking to the above facts and the observations of the Supreme Court in the case of **Atik Ahmed (supra),** we do not find that this is a fit case to grant temporary bail or parole to the

applicant on the ground of marriage of his son.

11. Application is rejected.

[N.V.DABHOLKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]